

**RESOLUTION OF THE BOARD OF RETIREMENT OF
VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
REGARDING *ALAMEDA* CORRECTIONS OF PEPRA EXCLUSIONS
AS TO RETIRED MEMBERS**

WHEREAS, the Ventura County Employees' Retirement Association ("VCERA") and its Board (the "Board") are governed by the County Employees Retirement Law of 1937 (Government Code sections 31450, *et seq.*) ("CERL") and the Public Employees' Pension Reform Act of 2013 (Government Code sections 7522, *et seq.*) ("PEPRA").

WHEREAS, on July 30, 2020, the California Supreme Court filed a decision entitled *Alameda County Deputy Sheriffs' Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032, 1070 ("*Alameda*").

WHEREAS, by an "*Alameda* Implementation Resolution" adopted and approved by the Board on October 12, 2020, the Board followed *Alameda*, and directed that "PEPRA Exclusions" were to be applied to members who retired on or after January 1, 2013.

WHEREAS, VCERA has applied the PEPRA Exclusions to its members who retired on and after July 30, 2020, but has not yet changed the retirement or survivor allowances of its members and beneficiaries who retired on or after January 1, 2013 and prior to July 30, 2020, in light of continuing litigation and administrative appeals applicable to those pay items ("post-PEPRA Retirees").

WHEREAS, California law does not support retirement boards providing a "window period" during which members may retire with allowances calculated to include benefits that are not pensionable. See, e.g., *City of San Diego v. San Diego City Employees' Retirement System* (2010) 186 Cal.App.4th 69 ("window period" during which the retirement board knowingly permitted members to purchase service credit at unlawfully low rates was illegal). California law does, however, support a retirement board's discretionary determination that, when the totality of circumstances so warrant, it need not recoup all amounts it has overpaid to retirees directly from them, and such amounts may be returned to the retirement system through employer payments on the unfunded actuarial accrued liability ("UAAL"). See *City of Oakland v. Oakland Police and Fire Retirement System* (2014) 224 Cal.App.4th 210; *In Re Retirement Cases*, *supra*, 110 Cal.App.4th 426.

WHEREAS, this "*Alameda* Correction Resolution of PEPRA Exclusions as to Retired Members" ("this Resolution") supplements the *Alameda* Implementation Resolution by (1) modifying paragraph 4 thereof such that overpayments made on and after August 31, 2020 would not be recouped directly from post-PEPRA Retirees; and (2) specifying alternative means for administrative appeals.

WHEREAS, this Resolution is intended to comply with the requirements of the Internal Revenue Code of 1986, and the regulations issued thereunder, as applicable.

NOW, THEREFORE BE IT RESOLVED, that the VCERA Board declares the following:

1. The foregoing Recitals are incorporated herein by reference.

2. With respect to all Post-PEPRA Retirees whose benefits have not already been calculated in accordance with *Alameda* with overpaid contributions refunded as provided herein (“Retirees”), VCERA will determine, as soon as administratively feasible, the member contributions paid by Retirees on any PEPRA Exclusions on and after January 1, 2013 (“Overpaid Contributions”). VCERA will apply to the Overpaid Contributions compound interest per annum, calculated as of VCERA’s applicable semi-annual interest crediting dates (at 7.9% per annum, which the Board set based upon VCERA’s earnings since inception) (“Interest”). Any Overpaid Contributions plus Interest to be refunded, will be offset by any overpaid benefits such Retirees already have received as the result of the inclusion of any PEPRA Exclusions (“Overpaid Benefits”), plus Interest, in accordance with requirements under the Internal Revenue Code and other applicable law; provided, however, for good cause shown that the Retirees, as a whole, did not cause the delay in the Board’s implementation of this *Alameda* Correction Resolution and would be unduly burdened by recoupment of funds from them, the Board hereby exercises its lawful discretion, notwithstanding statements to the contrary in the *Alameda* Implementation Resolution which are hereby modified, to limit its recoupment from Retirees of any Overpaid Benefits that they have received, and will receive, plus Interest, prior to VCERA correcting their retirement allowance distribution in accordance with this Resolution, to the referenced offset against their Overpaid Contributions, plus Interest. All remaining Overpaid Benefits will be returned to VCERA through employer payments on the UAAL.

3. VCERA will provide Retirees who will be impacted by the foregoing actions written notice of the calculation of refunded amounts that will be paid to them, if any, and the adjusted benefit amounts that will be provided to them, as soon as administratively practicable, along with options for receipt of any payments due as set forth in this Resolution. Any challenges to such calculations shall first be made to the VCERA Retirement Administrator, and, if denied, may be referred by the Administrator for further review pursuant to the VCERA Resolution on *Alameda* Appeals, and if not, are appealable under Code of Civil Procedure section 1085. *Shelden v. Marin Cty. Employees' Ret. Assn.* (2010) 189 Cal.App.4th 458.



Mike Sedell, Chair of the Board